

CHRISTOPHER A. MARKS

IBLA 76-614

Decided July 19, 1976

Appeal from decision of the Utah State Office, Bureau of Land Management, requiring the filing of bonds preliminary to issuance of geothermal leases U-30139, U-30140, and U-30141.

Set aside and remanded.

1. Geothermal Leases: Generally -- Geothermal Leases: Bonds --
Regulations: Generally -- Regulations: Interpretation

It is proper to afford a geothermal lease applicant the benefit of a regulation, adopted after the filing of his application, absent the impairment of third party rights and adverse impact on the interests of the United States. Where a geothermal lease regulation requires the filing of a compliance bond as a condition precedent to issuance of a lease, and that regulation is amended during the pendency of an application to require such a bond only as a condition precedent to entry on the leased lands, the holder of the application may be granted a lease under the amended requirement, if all else be regular.

APPEARANCES: Christopher A. Marks, pro se.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

Christopher A. Marks has appealed from a decision of the Utah State Office, Bureau of Land Management (BLM), dated April 27, 1976. That decision, in part, required appellant to file a \$ 10,000 lease bond for each of his three geothermal lease applications, U-30139, U-30140, and U-30141, or a nationwide bond for \$ 150,000, or a statewide bond for \$ 50,000, as a condition precedent to issuance of the leases.

Appellant in essence urges that the Bureau of Land Management has pending a policy change which would obviate the filing of a bond as a condition precedent for lease issuance.

The pertinent regulation, 43 CFR 3206.1-1(b), in force at the time of the rendition of the decision below, provided:

(b) Lease compliance bond. The applicant for a noncompetitive lease or the successful bidder for a competitive lease must furnish, prior to the issuance of the lease, and thereafter maintain a bond of not less than \$ 10,000 conditioned on compliance with all the terms of the lease. [Emphasis supplied.]

It follows that the decision below was correct when rendered. See also 43 CFR 3206.4-3 and 3206.6. However, on March 1, 1976, there was published in the Federal Register, 41 F.R. 8794, proposed rulemaking liberalizing the time requirement for filing the compliance bond. That proposal was adopted as final rulemaking and published in the Federal Register on June 10, 1976, 41 F.R. 23386-87, to become effective July 12, 1976, and it reads in pertinent part as follows:

§ 3206.1-1 Types of bonds

* * * * *

(b) Lease compliance bond. The lessee must furnish, prior to entry on the leased lands, and thereafter maintain a bond of not less than \$ 10,000 conditioned on compliance with all the terms of the lease. [Emphasis supplied.]

Therefore, at present a lease compliance bond need not be furnished until entry on the leased lands is imminent, in contradistinction to the past requirement of furnishing it "prior to the issuance of the lease." Thus, the question to be resolved is whether appellant is entitled to avail himself of the benefits of the amended regulation.

We hold that where a new regulation confers a benefit upon a public land applicant and it appears that no one else has any rights which would be impaired by giving such applicant the benefit of the new regulation and that the interests of the United States would not be adversely affected by such action, it is proper to accord the applicant such benefit. Henry Offe, 64 I.D. 52, 55-56 (1957). See Bureau of Sport Fisheries and Wildlife v. Rapid Transport, S.A., OHA 76-1 (June 22, 1976), at page 14. Appellant need not, therefore, file a compliance bond as a condition precedent to issuance of the geothermal leases he seeks.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the cases are remanded for appropriate action consistent herewith.

Frederick Fishman
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

